

ORIGINAL



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AZ CORP COMMISSION
DOCUMENT CONTROL

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION
OF JOHNSON UTILITIES COMPANY FOR
AN EXTENSION OF ITS EXISTING
CERTIFICATE OF CONVENIENCE AND
NECESSITY FOR WATER SERVICE.

WS-02859A-04-0844
DOCKET NO. WS-02987A-04-0869
**APPLICANT'S COMMENTS AND
OBJECTIONS TO THE STAFF
REPORT**

Johnson Utilities Company ("Johnson" or the "Company") by and through undersigned counsel, hereby provides its Comments and Objections to the Staff Report (the "Staff Report") dated March 17, 2006 as follows:

1. The Staff Report contains recommendations regarding two approvals that the Company should provide as compliance items in this Docket; namely, (1) the Pinal County Franchise for the subject area, and (2) the Designation of Assured Water Supply from the Arizona Department of Water Resources.

2. The Company received its original Pinal County Franchise on October 12, 1995, and has since received eight Expansions to that Franchise, which collectively covered the Company's entire Certificate of Convenience and Necessity ("CC&N") area. Attached hereto are 15 copies of the November 4, 1998 Franchise that covers the subject area.

1 3. Also attached is the Arizona Department of Water Resources Decision in Docket
2 No 2003-004, Decision and Order No. 26-400665, dated August 12, 2003, confirming the
3 availability of 52,250 Acre Feet of water. That is sufficient to serve in excess of 150,000
4 customers.

5 4. The Staff Report recommends denial of the Tariff Amendment attached to the
6 Amended Application and Request for Tariff Approval, dated November 7, 2005. Please recall
7 that this Docket was originally consolidated with Diversified Water Company ("Diversified")
8 Docket No. W-02859A-04-0844, which was subsequently bifurcated by the Administrative Law
9 Judge in Procedural Order dated December 13, 2005.

10 5. Johnson was granted the Wastewater CC&N to serve the area in both dockets
11 pursuant to Decision No 64062 dated October 4, 2001, and includes substantial additional area
12 within Diversified's CC&N. Johnson and Diversified agreed in the Joint Settlement Statement
13 that was docketed in the consolidated proceeding and referenced in the Staff Report, that each
14 would file respective tariffs designed to assist in collection of Johnson's wastewater only
15 customers monthly billings for services provided by Johnson in Diversified's water CC&N.
16 Those Tariffs were appended to the Joint Settlement Statement.

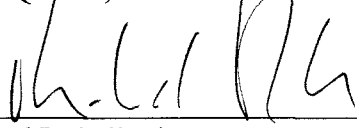
17 6. Johnson is of the opinion that Diversified has filed that companion Tariff with the
18 Commission.

19 7. The Company is of the further opinion that it is appropriate that those Tariffs,
20 which refer to the other company's companion Tariff in their respective Tariffs, should be
21 approved by the Commission in this Docket to assure a timely effective date of those Tariff.
22
23

1 WHEREFORE, the Company respectfully requests that the Decision in this Docket
2 acknowledge the docketing of the Staff's recommended compliance items, and further requests
3 that the Commission approve the Tariffs as discussed above.

4 RESPECTFULLY submitted this 31st day of March 2006.

5 SALLQUIST, DRUMMOND & O'CONNOR, P.C.

6 By: 
7 Richard L. Sallquist
8 4500 South Lakeshore Drive, Suite 339
9 Tempe, Arizona 85282
Phone: (480) 839-5202
Fax: (480) 345-0412

10
11
12
13 Original and fifteen copies of the
14 foregoing filed this 2nd day
of March 2006:

15 Docket Control
16 Arizona Corporation Commission
17 1200 West Washington
18 Phoenix, Arizona 85007
19
20
21
22
23

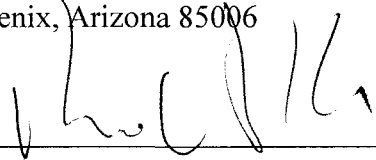
1 A copy of the foregoing
2 mailed/hand delivered this
3 4th day of March 2006, to:

3 Hearing Division
4 Arizona Corporation Commission
5 1200 West Washington
6 Phoenix, Arizona 85007

5 Utilities Division
6 Arizona Corporation Commission
7 1200 West Washington
8 Phoenix, Arizona 85007

8 Legal Division
9 Arizona Corporation Commission
10 1200 West Washington
11 Phoenix, Arizona 85007

10 William P. Sullivan
11 Curtis, Goodwin, Sullivan, Udall & Schwab
12 2712 N. 7th St.
13 Phoenix, Arizona 85006

13 
14 _____



2nd Amendment
OFFICIAL RECORDS OF
PINAL COUNTY RECORDER

KATHLEEN C. FELIX

DATE: 12/08/98 TIME: 1636
FEE : 0.00
PAGES: 6
FEE NO: 1998-050223

Expansion and Amendment Of The Johnson Utility Water and Sewer Franchise

WHEREAS, Johnson Utilities L.L.C. had received a water and sewer franchise from Pinal County to establish and maintain water and sewer services on Johnson Utilities L.L.C., see document number 1995-033065 in the Office of the Pinal County Recorder (hereinafter "Original Franchise").

WHEREAS, Johnson Utilities L.L.C., a(n) Arizona corporation, duly authorized to conduct business in the State of Arizona, has duly filed and presented to the Board of Supervisors of the County of Pinal, State of Arizona, its application for expansion of the Original Franchise for the purpose of constructing, operating and maintaining water and sewer lines and related appurtenances along, under and across the public streets, alleys and highways, except federal and state highways, within the unincorporated area of Pinal County, Arizona, as described in Exhibit "A" attached hereto (hereinafter "Expansion").

WHEREAS, upon filing of Johnson Utilities L.L.C.'s application for the Expansion, the Board of Supervisors of Pinal County ordered a public notice of its intent to consider the granting of the Expansion to be published in a newspaper of general circulation, in Pinal County, Arizona, stating the time and place for consideration of the Expansion was set for 10:00 A.M. on November 4, 1998, at the Pinal County Board of Supervisors' Hearing Room, Administration Building No. 1, Florence, Arizona.

WHEREAS, said application for the Expansion and Amendment having come on regularly for hearing at 11:30 A.M. on November 4, 1998; and it appearing from the affidavit of the publisher of the Casa Grande Valley Newspaper that due and regular notice of said time and place set for the consideration of such action has been published for at least once a week for three consecutive weeks prior to said hearing date, to-wit: in the issues of the Florence Reminder and Blade-Tribune published on October 15, 1998, October 22, 1998, and October 29, 1998; and the matter being called for hearing at 11:30 A.M., and an opportunity having been given to all interested parties to be heard.

WHEREAS, the Board of Supervisors of Pinal County has the power to amend an existing franchise under its general police powers in such matters.

NOW, THEREFORE,

Section 1: DEFINITIONS

The following terms used in this expansion and amendment of the Original Franchise shall have the following meanings:

- A. County: Pinal County, Arizona
- B. Board: Board of Supervisors of Pinal County, Arizona.
- C. Grantor: Pinal County, by and through its Board of Supervisors
- D. Grantee: Johnson Utilities L.L.C., a(n) Arizona corporation, its successors and assigns
- E. Grantee's Facilities: water and sewer lines and related appurtenances

Section 2: GRANT

Grantor, on November 4, 1998, hereby grants to Grantee, for a period of time not to exceed the Original Franchise, this expanded and amended franchise (hereinafter "Second Amended Franchise") for the purpose of constructing, operating and maintaining water and sewer lines and related appurtenances along, under and across public streets, alleys and highways, except federal and state highways, under the terms and conditions set forth herein within the unincorporated area of Pinal County, Arizona, as described in the Expansion and the Original Franchise (hereinafter "Franchise Area").

Section 3: ACCEPTANCE BY GRANTEE / EFFECTIVE DATE FRANCHISE

The Second Amended Franchise shall be accepted by Grantee by written instrument in the form attached hereto as Exhibit "B" (hereinafter "Acceptance"), executed and acknowledged by it as a deed is required to be, and filed with the Clerk of the Pinal County Board of Supervisors within thirty days after the date this Second Amended Franchise is accepted by County. This Second Amended Franchise shall be effective upon delivery of the Acceptance to the Clerk of the Pinal County Board of Supervisors in the form required and within the time specified above.

Section 4: LIMITS ON GRANTEE'S RECOURSE

- A. Grantee by its acceptance of the Second Amended Franchise acknowledges such acceptance relies upon grantee's own investigation and understanding of the power and authority of the County to grant said franchise. Grantee by its acceptance of the Second Amended Franchise accepts the validity of the terms and conditions of the Second Amended Franchise in their entirety and agrees it

will not, at any time, proceed against County in any claim or proceeding challenging any term or provision of the Second Amended Franchise as unreasonable, arbitrary or void, or that County did not have the authority to impose such term or condition.

B. Grantee by accepting the Second Amended Franchise acknowledges that it has not been induced to accept the same by any promise, verbal or written, by or on behalf of County or by any third person regarding any term or condition of the Second Amended Franchise not expressed therein. Grantee by its acceptance of the Second Amended Franchise further pledges that no promise or inducement, oral or written, has been made to any employee or official of County regarding receipt of the Second Amended Franchise.

C. Grantee by its acceptance of the Second Amended Franchise further acknowledges that it has carefully read the terms and conditions of the Second Amended Franchise and accepts without reservation the obligations imposed by the terms and conditions herein.

D. In case of conflict or ambiguity between the Second Amended Franchise and the Original Franchise, the provision which provides the greatest benefit to County, as determined solely by County, shall prevail.

E. The Board's decision concerning its selection and awarding of the Second Amended Franchise shall be final.

Section 5: SEVERABILITY

If any section, provision, term or covenant or any portion of any section, provision, term or covenant of the Second Amended Franchise is determined to be illegal, invalid or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory agency having jurisdiction thereof, such determination shall have no effect on any remaining portion of such section, provision, term or covenant or the remaining sections, provisions, terms or covenants of the Second Amended Franchise, all of which will remain in full force and effect for the term of the Second Amended Franchise or any renewal or renewals thereof.

Section 6: NOTICE

Notices required under the Second Amended Franchise shall be delivered or sent by certified mail, postage prepaid to:

Grantor:

Clerk of the Pinal County Board of Supervisors
P.O. Box 827
31 N. Pinal
Florence, Arizona 85232

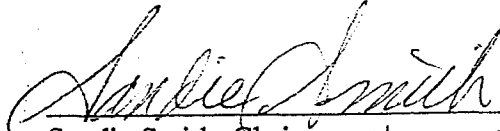
Grantee:


Johnson Utilities L.L.C.
5320 E. Shea Blvd.
Scottsdale, Arizona 85254

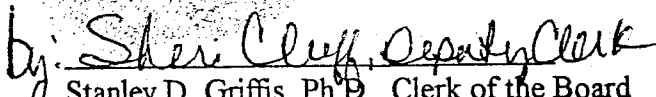
The delivery or mailing of such notice shall be equivalent to direct personal notice and shall be deemed to have been given at the time of delivery. Either party may change its address under this section by written notice to the other party.

IN WITNESS WHEREOF, the Board of Supervisors of Pinal County, Arizona, by its Chairman and its Clerk, thereunto duly authorized, has hereunto set its hand and cause its official seal to be affixed on November 4, 1998.

PINAL COUNTY BOARD OF SUPERVISORS


Sandie Smith, Chairman 11-4-98


ATTEST

by: 
Stanley D. Griffis, Ph.D., Clerk of the Board

APPROVED AS TO FORM:

ROBERT CARTER OLSON
PINAL COUNTY ATTORNEY

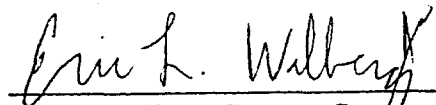

Eric L. Walberg, Deputy County Attorney

Exhibit A

JOHNSON UTILITIES
FRANCHISE EXTENSION APPLICATION

All areas within the following described Sections not previously franchised to the Applicant:

Sections 35 and 36, all in Township 3 South Range 7 East

Sections 13 through 36, all in Township 3 South Range 8 East

Sections 16 through 21 and 28 through 33, all in Township 3 South Range 9 East

Sections 1 through 4, 10 through 14 and 23 through 26, all in Township 4 South Range 8 East

Sections 4 through 9, all in Township 4 South Range 9 East

Exhibit B

SAMPLE ACCEPTANCE OF EXPANDED AND AMENDED FRANCHISE

To: Board of Supervisors Pinal County, Arizona

Grantee, Johnson Utilities L.L.C., a(n) Arizona corporation, does hereby accept the _____ grant of an Second Amended Franchise from Pinal County, Arizona, to construct, operate, and maintain water and sewer lines and related fixtures along, under and across present and future public streets, alleys and highways, except state highways, within the unincorporated area of Pinal County, Arizona, as described in the Application, a copy of which is attached to the Second Amended Franchise, which is made a part hereof.

Grantee unconditionally accepts the franchise and covenants to faithfully comply with, abide by, to observe and perform all the provisions, terms and conditions of the Second Amended Franchise. Grantee accepts such provisions, terms and conditions and expressly waives any and all objections to the reasonableness or legality of any provisions of the same or any part thereof, or as to the legal right or authority of the County of Pinal to impose the same.

Grantee declares that the statements and recitals in said Second Amended Franchise are correct, and Grantee declares it has made and does make the agreement, statements and admissions in said Second Amended Franchise recited to have been or to be made by Grantee.

attyciv\franchise\19981799 E&A Franchise Final



KATHLEEN C. J.

DATE: 12/08/98 TIME: 1636
FEE : 0.00
PAGES: 2
FEE NO: 1998-050224

ail to:

rd of Supervisors

a 85232

(The above space reserved for recording information)

CAPTION HEADING

Acceptance of Expanded and Amended Franchise

ACCEPTANCE OF EXPANDED AND AMENDED FRANCHISE

To: Board of Supervisors Pinal County, Arizona

Grantee, Johnson Utilities L.L.C., a(n) Arizona corporation, does hereby accept the November 4, 1998 grant of an Second Amended Franchise from Pinal County, Arizona, to construct, operate, and maintain water and sewer lines and related fixtures along, under and across present and future public streets, alleys and highways, except state highways, within the unincorporated area of Pinal County, Arizona, as described in the Application, a copy of which is attached to the Second Amended Franchise, which is made a part hereof.

Grantee unconditionally accepts the franchise and covenants to faithfully comply with, abide by, to observe and perform all the provisions, terms and conditions of the Second Amended Franchise. Grantee accepts such provisions, terms and conditions and expressly waives any and all objections to the reasonableness or legality of any provisions of the same or any part thereof, or as to the legal right or authority of the County of Pinal to impose the same.

Grantee declares that the statements and recitals in said Second Amended Franchise are correct, and Grantee declares it has made and does make the agreement, statements and admissions in said Second Amended Franchise recited to have been or to be made by Grantee.

Dated this 16 day of November, 1998.

Johnson Utilities L.L.C.

By: [Signature]

Title: Manager

STATE OF ARIZONA)

) ss.

County of)

The foregoing instrument was acknowledged before me this 16 day of November, 1998, by George H Johnson, Manager of Johnson Utilities, a(n) Arizona corporation, and being authorized to do so, executed the foregoing instrument on behalf of the corporation for the purposes therein stated.

Christine M Dermody
Notary Public

My Commission Expires:

June 9, 2002



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DEPARTMENT OF WATER RESOURCES
BEFORE THE DIRECTOR

**IN THE MATTER OF THE APPLICATION
OF JOHNSON UTILITIES
FOR A DESIGNATION AS HAVING AN
ASSURED WATER SUPPLY**

AWS No. 2003-004

DECISION AND ORDER

No. 26-400665

On December 26, 2001, the Department of Water Resources (Department) received an application from Johnson Utilities, L.L.C. requesting that the Department modify Johnson Utilities' designation of assured water supply pursuant to A.R.S. § 45-576(D) and A.A.C. R12-15-701 *et seq.* for Johnson Utilities' municipal water delivery system. On January 28, 2003, the Department determined the application to be complete.

After receiving Johnson Utilities' request to modify its designation of assured water supply, and after reviewing relevant information regarding the modification request, including: 1) the hydrologic study of the proposed source of supply on file with the Department, 2) information submitted regarding Johnson Utilities' consistency with the management plan and management goal, 3) information provided by the Arizona Department of Environmental Quality regarding the quality of the proposed source of water, and 4) information regarding Johnson Utilities' financial capability to construct the necessary delivery system, treatment works and storage facilities, the Department finds the following:

1. Johnson Utilities is a private water company regulated by the Arizona Corporation Commission.
2. Johnson Utilities has the legal authority, as granted by the Arizona Corporation Commission, to deliver water to its customers located within the boundaries of its Certificate of Convenience and Necessity as indicated on maps on file with the Department.
3. Johnson Utilities has the right to withdraw and deliver groundwater to its customers pursuant to service area right #56-002346.0000.
4. Johnson Utilities currently serves 100 percent groundwater to its customers.
5. Johnson Utilities' current and committed demand is 1,232 acre-feet per year, as of 2003.

- 1 6. Johnson Utilities' groundwater supply proven to be physically available is 52,250 acre-feet
2 per year.
- 3 7. Johnson Utilities' total groundwater supply which was proven to be physically,
4 continuously and legally available is 18,154 acre-feet per year, which is greater than
5 Johnson Utilities' projected demand for the calendar year 2011 of approximately 5,633
6 acre-feet per year.
- 7 8. Historic hydrologic information demonstrates that groundwater levels in the service area
8 currently range from approximately 300 to 700 feet with a minimal regional decline.
- 9 9. After one hundred years of pumping at 5,633 acre-feet per year, the depth-to-water inside
10 Johnson Utilities' service area is expected to range from 400 to 550 feet below land
11 surface and not expected to exceed 1,000 feet below land surface.
- 12 10. Johnson Utilities is regulated as a large provider under the Department's Third
13 Management Plan for the Phoenix Active Management Area. Johnson Utilities is in
14 compliance with the Third Management Plan requirements as of the date of this decision
15 and order.
- 16 11. The groundwater supply that Johnson Utilities intends to provide its customers currently
17 meets all federal and state water quality standards, based on compliance information
18 provided by the Arizona Department of Environmental Quality.
- 19 12. On June 9, 2000 Johnson Utilities became a member service area of the Central Arizona
20 Groundwater Replenishment District ("CAGRDR").
- 21 13. The June 9, 2000 replenishment agreement between Johnson Utilities and the CAGRDR
22 limits the replenishment obligation of the CAGRDR to 5,967 acre-feet per year, which is more
23 than Johnson Utilities projected 2011 demand of 5,633 acre-feet per year.
- 24 14. On February 24, 1995, the Director designated that the CAGRDR Plan of Operation was
25 consistent with achieving the management goal of the Phoenix Active Management Area.
- 26 15. As of the date of this decision and order, the CAGRDR is in compliance with its
27 groundwater replenishment obligation for the Phoenix Active Management Area.
- 28 16. In accordance with Arizona Corporation Commission Rules and Regulations, Johnson
Utilities finances extension of its distribution system through line extension agreements

1 with owners of new developments. Any owner of a new subdivision served by Johnson
2 Utilities must prove financial capability to construct the necessary water infrastructure to
3 the appropriate platting entity and the Arizona Department of Real Estate pursuant to
4 Titles 9, 11, and 32 of the Arizona Revised Statutes.

5 **Having reviewed the Findings of Fact, the Department makes the following**

6 **Conclusions of Law:**

- 7 1. The annual volume of water was found to be physically, continuously and legally available
8 to Johnson Utilities for a minimum of 100 years as prescribed in A.A.C. R12-15-703, and
9 exceeds Johnson Utilities' projected demand of 5,633 acre-feet for the year 2011.
- 10 2. The water supply served by Johnson Utilities currently meets the water quality
11 requirements specified in A.A.C. R12-15-704.
- 12 3. Pursuant to A.R.S. § 45-576.01(B), 5,967 acre-feet of Johnson Utilities projected use of
13 groundwater, as a member service area of the CAGRD, is consistent with achieving the
14 management goal of the Phoenix Active Management Area.
- 15 4. In accordance with A.A.C. R12-15-706, Johnson Utilities proposed use of water is
16 consistent with the Phoenix Active Management Area Third Management Plan
17 requirements.
- 18 5. Johnson Utilities satisfies the financial capability criteria prescribed in A.A.C. R12-15-707.
- 19 6. Johnson Utilities satisfied all the requirements for a designation of an assured water
20 supply.

21 **Having reviewed the Conclusions of Law, the Department hereby issues this Order**
22 **designating Johnson Utilities as having an assured water supply, subject to the following**
23 **conditions:**

- 24 1. The Department reserves the right under A.A.C. R12-15-709 (A) to periodically review
25 and modify this designation as conditions warrant.
- 26 2. Pursuant to A.A.C. R12-15-709, the Department may, at any time, review, modify or
27 revoke this designation if the findings of fact or the conclusions of law upon which the
28 designation are based change or are invalid.

- 1 3. The Department's determination that an assured water supply exists for Johnson Utilities
2 is based on its analysis of the groundwater supplies pledged by Johnson Utilities.
- 3 4. Pursuant to A.A.C. R12-15-704, Johnson Utilities shall satisfy any state water quality
4 requirements established for its proposed use after the date of this designation.
- 5 5. Johnson Utilities shall annually provide to the Department the following information in the
6 manner prescribed in A.A.C. R12-15-711:
- 7 a. The estimated future demand of platted, undeveloped lots located in Johnson
8 Utilities' service area.
- 9 b. The projected demand at build-out for customers with which Johnson Utilities has
10 entered into a notice of intent to serve agreement in the calendar year.
- 11 c. A report regarding Johnson Utilities' compliance with water quality requirements.
- 12 d. The depth-to-static water level of all wells from which Johnson Utilities withdrew
13 water during the calendar year.
- 14 e. Any other information requested by the Director to determine whether Johnson
15 Utilities is continuing to meet all the requirements necessary to maintain this
16 designation of assured water supply.

17 **IT IS HEREBY ORDERED THAT JOHNSON UTILITIES BE DESIGNATED AS HAVING AN**
18 **ASSURED WATER SUPPLY:**

19 DATED this 12 day of August, 2003.

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21 Herb R. Guenther
22 Director
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